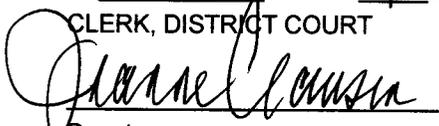


STATE OF IDAHO )  
County of KOOTENAI )<sup>SS</sup>  
FILED 1/5/2022  
AT 5:00 O'clock P. M

CLERK, DISTRICT COURT  
  
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, )  
)  
*Plaintiff,* )  
)  
vs. )  
)  
NATHANIEL KA WETT JONES, )  
)  
DOB: 02/21/2000 )  
)  
IDOC No. 133453 )  
)  
*Defendant.* )  
)

Case No. **CR28-19-4027**

**MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANT'S  
PRO SE MOTIONS FILED JANUARY 4,  
2022**

**I. INTRODUCTION AND FACTUAL BACKGROUND.**

On June 27, 2019, this Court sentenced defendant Nathaniel Ka Wett Jones (Jones) to a fixed sentence of four years and an indeterminate sentence of one year, total unified sentence of five years for the felony offense of Battery With Intent to Commit Robbery, I.C. § 18-903 and 18-911, and also sentenced Jones to a fixed sentence of four years and an indeterminate sentence of eleven years, total unified sentence of fifteen years for the felony offense of Conspiracy to Commit Robbery, I.C. § 18-6501 and 18-1701, both for events that occurred on February 26, 2019, Those sentences run concurrent. The Court sent Jones on a period of retained jurisdiction.

On May 21, 2020, at Jones' jurisdictional review hearing, due to Jones' abysmally bad report from North Idaho Correctional Institution dated May 5, 2020, this Court relinquished jurisdiction and imposed Jones' sentences. That report recommended to this Court that this Court relinquish its jurisdiction. Addendum to Presentence Report 6. This was due to Jones' harassing, manipulative and threatening behavior on his lengthy period of retained jurisdiction. *Id.*

On July 13, 2020, Jones, through his attorney filed Jones' Motion for Reduction of Sentence Pursuant to ICR 35. A hearing was held on August 5, 2020, at which Jones

testified telephonically from prison. At the conclusion of that hearing, this Court denied Jones his requested relief (reduction of the fixed portion of his sentences) under I.C.R. 35. The next day, this Court signed an order to that effect.

On January 4, 2022, Jones, *pro se*, from prison, made several filings. Jones filed a 1) Motion for Correction of Illegal Sentence I.C.R. 35(a), and a Motion for Hearing on such I.C.R. 35 Motion; 2) a Motion and Affidavit for Appointment of Counsel and a Motion and Affidavit for Forma Paupers; 3) a Motion to Redact PSI Report, and Alternative, for Disqualification or Recusal of Sentencing Judge for Good Cause Appearing; 4) Motion for Confidential Neuropsychological Examination, and Memorandum in Support of Motion for Confidential Neuropsychological Examination, and Memorandum of Neuropsychological (MRI) Facts Supported Under New Technology.

Each of these will be discussed by this Court in this Memorandum Decision and Order.

## **II. JONES' ALTERNATIVE REQUEST FOR THIS COURT TO DISQUALIFY ITSELF IS DENIED.**

Jones' alternative "request" must be discussed first, because ordinarily, a pending motion to disqualify a judge divests the Court from its ability to deal with any other pending motion, until after the motion to disqualify has been addressed. However, in this case, Jones has not filed a *motion* to disqualify for cause under I.C.R. 25(b) and (c) (and no affidavit in support of such a motion has been filed as required by those subsections). Jones would be untimely in moving to disqualify under I.C.R. 25(a). Additionally, the Idaho Supreme Court has suspended that right at the present time.

In Jones' Motion to Redact PSI Report, and Alternative, for Disqualification or Recusal of Sentencing Judge for Good Cause Appearing, Jones asks this Court to "voluntarily disqualify itself pursuant to I.C.R. 25(d)." Mot. to Redact PSI Report, and Alternative, for Disqualification or Recusal of Sentencing Judge for Good Cause Appearing 2. Voluntary disqualification is left to the discretion of the judge, and this Court recognizes that it has such discretion, and exercises such discretion by denying Jones' request (again, not a motion) to disqualify itself. This Court finds no reason need be given for that decision.

Jones also claims his attorney failed to tell him that he need not incriminate himself in answering questions involved in the presentence investigation process. *Id.* at 1-2. That

would be a matter upon a Post Conviction Relief claim. At the present time, this Court lacks the jurisdiction to resolve these claims within the context of Jones' criminal case.

### **III. JONES' MOTION FOR CORRECTION OF ILLEGAL SENTENCE UNDER I.C.R. 35(a) and MOTION FOR HEARING.**

This is Jones' second motion under I.C.R. 35. Successive motions are prohibited. I.C.R. 35(b). However, Jones makes this motion under I.C.R. 35(a), claiming this Court's sentences were illegal. Thus, this Court finds the current motion is not a prohibited successive motion. Also, the motion is timely as a motion to correct an illegal sentence may be made at any time under I.C.R. 35(a).

However, Jones' motion under I.C.R. 35(a) lacks merit, because it is a legal sentence. Jones claims his sentence was illegal because "he was not allowed to introduce mitigating evidence of neuropsychological evaluation of defendant/petitioner at time of sentencing as part of the pre-sentence investigation." Mot. for Correction of Illegal Sentence, 2. Even if true, that does not make the sentence illegal. The sentences imposed were within the statutory maximum sentences provided for these crimes. The felony offense of Battery With Intent to Commit Robbery, I.C. § 18-903 and 18-911, is punishable by up to 15 years, so this Court's fixed sentence of fixed sentence of four years and an indeterminate sentence of one year, for a total unified sentence of five years is within that statutory framework. Likewise, this Court's four years fixed and an indeterminate sentence of eleven years, for a total unified sentence of fifteen years for the felony offense of Conspiracy to Commit Robbery, is within the statutory framework of I.C. § 18-6501 and 18-1701, as Robbery carries a mandatory minimum of five years and a potential life sentence. The term "illegal sentence" under I.C.R. 35(a) is narrowly construed and interpreted as a sentence that is illegal from the face of the record, i.e., does not involve significant questions of fact or require an evidentiary hearing. *State v. Meier*, 159 Idaho 712, 713, 366 P.3d 197, 198 (Ct. App. 2016), citing *State v. Clements*, 148 Idaho 82, 87, 218 P.3d 1143, 1148 (2009). The rule is limited to legal questions surrounding the defendant's sentence, and any factual issues must be apparent from the face of the record. *Id.* This Court, as in *Meier*, acted within its statutorily-conferred discretion to impose sentences that were consistent with the statutes. *Id.*

Finally, Jones' request to have a hearing on this motion would be a waste of time. A motion to modify a sentence "shall be considered and determined by the court without the

admission of additional testimony and without oral argument, unless otherwise ordered by the court in its discretion.” I.C.R. 35; see *State v. Copenhaver*, 129 Idaho 494, 496, 927, P.2d 884, 886 (1996); *State v. James*, 112 Idaho 239, 242, 731 P.2d 234, 237 (Ct. App. 1986) (it is the defendant’s burden to present any additional evidence and the court cannot abuse its discretion in “...unduly limiting the information considered in deciding a Rule 35 motion”); *State v. Puga*, 114 Idaho 117, 118, 753 P.2d 1263, 1264 (Ct. App. 1987). Even though a hearing was requested, “[t]he decision whether to conduct a hearing on an I.C.R. 35 motion to reduce a legally-imposed sentence is directed to the sound discretion of the district court.” *State v. Peterson*, 126 Idaho 522, 525, 887 P.2d 67, 70 (Ct. App. 1994) (citing *State v. Findeisen*, 119 Idaho 903, 811 P.2d 513 (Ct. App. 1991)). The Court has reviewed Jones’ I.C.R. 35 motion. This Court finds there is nothing that could be presented at a hearing on this I.C.R. 35 motion that would be of benefit to the Court. A hearing would only waste counsel’s time and the Court’s time.

#### **IV. JONES’ MOTION FOR CONFIDENTIAL NEUROPSYCHOLOGICAL EXAMINATION**

Jones’ Motion for Confidential Neuropsychological Examination, and Memorandum in Support of Motion for Confidential Neuropsychological Examination, and Memorandum of Neuropsychological (MRI) Facts Supported Under New Technology must be denied for the simple reason that this Court lacks the jurisdiction to provide the relief requested. Jones’ request should be made to the Idaho Department of Corrections. This Court has lost jurisdiction over Jones’ criminal case.

#### **V. JONES’ MOTION AND AFFIDAVIT FOR APPOINTMENT OF COUNSEL AND AFFIDAVIT FOR FORMA PAUPERS**

Jones’ Motion and Affidavit for Appointment of Counsel and a Motion and Affidavit for Forma Paupers must be denied because none of Jones’ motions have any merit. No attorney could change that. There is little doubt Jones lacks the financial resources to hire an attorney, but an attorney would provide no benefit to any of these motions. The motions are frivolous.

#### **VI. ORDERS.**

IT IS HEREBY ORDERED THAT Jones’ Motion to Redact PSI Report, and Alternative, for Disqualification or Recusal of Sentencing Judge for Good Cause Appearing, are both DENIED, for the reasons set forth above.

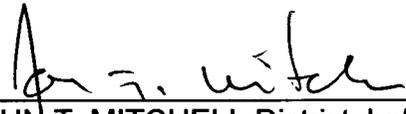
IT IS FURTHER ORDERED THAT Jones’ Motion for Correction of Illegal Sentence

I.C.R. 35(a), and a Motion for Hearing on such I.C.R. 35 Motion is DENIED, for the reasons set forth above.

IT IS FURTHER ORDERED THAT Jones' Motion for Confidential Neuropsychological Examination, and Memorandum in Support of Motion for Confidential Neuropsychological Examination, and Memorandum of Neuropsychological (MRI) Facts Supported Under New Technology, is DENIED, for the reasons set forth above.

IT IS FURTHER ORDERED THAT Jones' Jones' Motion and Affidavit for Appointment of Counsel and a Motion and Affidavit for Forma Paupers, is DENIED for the reasons set forth above.

DATED this 5<sup>th</sup> day of January, 2022

  
JOHN T. MITCHELL District Judge

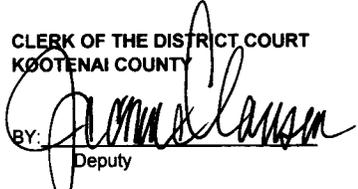
**CERTIFICATE OF MAILING**

I hereby certify that on the 10<sup>th</sup> day of January, 2022 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Nathaniel Ka Wett Jones  
IDOC No. 133453  
P. O. Box 51  
Boise, ID 83707 ✓

Kootenai County Prosecuting Attorney  
*kepaicowets@kcgov.us*

CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY

BY:   
Deputy